

PT 01-2

Tax Type: Property Tax

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

MUSEUM OF
CONTEMPOARY ART,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No. 98-PT-0011
(96-16-1341)

P.I.N.S: 17-03-232-008-8001
17-03-232-008-8002
17-03-232-008-8003

**RECOMMENDATION FOR DISPOSITION PURSUANT TO
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

APPEARANCES: Mr. Patrick J. Cullerton of Fagel & Haber and Mr. Mark R. Davis of O'Keefe, Ashenden, Lyons & Ward on behalf of the Museum of Contemporary Art (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination finding that: (1) 94.7% of the building improvement located on real estate identified by Cook County Parcel Index Numbers 17-03-232-008-8001, 17-03-232-008-8002 and 17-03-232-008-8003 (hereinafter collectively referred to as the "subject property"), and a proportionate amount of its underlying land, qualified for exemption from real estate taxes for 25% of the 1996 assessment year under Sections 9-185 and 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1, *et seq* (hereinafter the "Code"); but, (2) the remaining 5.3% said improvement, together with: (a) a proportionate amount of its underlying ground; and, (b)

100% of the parking garage (hereinafter the “parking garage”) located on the subject property, did not qualify for such exemption under Sections 15-65 and 15-125 of the Code.

At issue herein are the following questions: (1) whether the subject property should be exempt from real estate taxes for any portion of the 1996 assessment year that occurred on or before September 30, 1996; (2); whether any or all parts of the building improvement which the Department determined to be non-exempt (hereinafter collectively referred to as the “non-exempt portions”) should be exempt from real estate taxes for any portion of the 1996 assessment year under Sections 9-185 and 15-65(a) of the Code; and, (3) whether any part of the parking garage should be exempt from real estate taxes for any portion of the 1996 assessment year under Sections 9-185 and 15-125 of the Code.

The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on February 10, 1999. The Board reviewed applicant’s complaint and recommended to the Department that the entire subject property be exempt as of September 30, 1996. The Department, however, partially rejected this Recommendation by issuing the aforementioned determination, which, in pertinent part, found that: (1) part of the subject property should be exempt as of September 30, 1996; and, (2) the parking garage and other non-exempt portions were not in exempt use.

Applicant filed a timely appeal as to this partial denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting

documentation, I recommend that: (1) applicant's motion be granted; and, (2) the entire subject property, inclusive of the disputed areas and the parking garage, be exempt from real estate taxes for 100% of the 1996 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the determination that was issued by the Office of Local Government Services on December 26, 1997. Administrative Notice.
2. The Department's position in this matter is, for present purposes, that all parts of the subject property, except: (1) the entire parking garage; (2) its underlying ground; (3) the non-exempt portions; and, (4) the ground underlying such non-exempt portions, qualify for exemption from 1996 real estate taxes under Section 15-65 of the Property Tax Code, but only for that 25% of the 1996 assessment year which occurred on or after September 30, 1996. Administrative Notice.
3. Applicant is an Illinois not-for-profit corporation, originally incorporated under the General Not For Profit Corporation Act as "The Gallery of Contemporary Art of Chicago," on April 14, 1964. Its basic organizational purposes are, per its by-laws, to foster interest in, and increase public awareness of, contemporary art. Applicant Motion Ex. No. 11.
4. The Application for Property Tax Exemption that applicant filed in connection with this matter indicates that: (1) the subject property is located at 200 E. Chicago Ave, Chicago, IL and improved with a 5-story art museum and an ancillary parking garage; (2) applicant uses the building improvement as a public art museum; and, (3) the museum improvement occupies a total of 138,199 square feet.

5. Applicant obtained fee title to the subject property from the State of Illinois by means of a quit claim deed dated September 30, 1996. Prior to obtaining this interest, applicant held a leasehold interest in the subject property pursuant to a 99 year ground lease with the Illinois Department Of Natural Resources (hereinafter “IDNR”).¹ Applicant Motion Ex. Nos. 3, 6.
6. The lease, dated May 9, 1990, provided, *inter alia*, that: (1) applicant was to pay the sum of \$1.00 per year in rent to the lessor, IDNR; (2)(a) all buildings and improvements existing on the subject property on the date of possession were to remain property of the lessor; provided that, (b) applicant was permitted to demolish and remove all buildings and improvements that existed on the subject property as of the date applicant took possession; (3) applicant was authorized to construct such new or additional improvements on the subject property as applicant might use for museum, educational, artistic and other related purposes; (4) any such improvements constructed by applicant during the term of the leasehold were to remain property of the applicant for so long as the leasehold remained in effect; (5) applicant was to pay any and all real estate taxes and other assessments levied against the subject property; and, (6) the lessor would not interfere with applicant’s quiet enjoyment of the subject property, provided that applicant was not in default of any of its obligations under the lease. Applicant Motion Ex. Nos. 3, 6.
7. Applicant terminated its lease with IDNR pursuant to a Lease Termination Agreement that was recorded contemporaneously with the quit claim deed under

1. IDNR is the successor to the Illinois Department Of Conservation, the State agency that was named as lessor in the original lease. Applicant Ex. No. 3, 6.

which applicant obtained fee simple title to the subject property. Applicant Motion Ex. Nos. 3, 6.

8. Pursuant to authorization contained in the lease, applicant began constructing a new museum improvement and related facilities on the subject property in April of 1994. Applicant received a certificate of occupancy for this improvement on May 17, 1996 and officially opened it to the public on June 21, 1996. Applicant Motion Ex. No. 3.
9. The museum improvement occupies a total of 138,199 square feet and contains the following:

SPACE	% of BUILDING SPACE
Exhibition Galleries	31.0%
Auditorium Used for Educational Lectures And Other Similar Events	14%
Café	2.7%
Bookstore	2.6%
Office Space, Technical Support Areas, Mechanical Equipment and Utilities	49.7%
Total Building Space	100%

Applicant Motion Ex. 3G

10. The subject property also contains the following ancillary improvements: (1) a sculpture garden/terrace; (2) a front plaza that contains landscaping; and, (3) a 75-space parking garage. *Id.*
11. All areas of the building improvement, save for the café and the bookstore, are exempt under terms of the Department's determination herein, as are all of the ancillary improvements except the parking garage. As such, the only areas currently in dispute are the café, the bookstore and the parking garage. Applicant Motion Ex. 3.
12. The café is located on the second floor of the museum building and divided into two sections. One section contains an express service area that offers coffee, tea, soft drinks and desserts; the other holds a full service restaurant that offers light meals. *Id.*
13. The café is: (1) open only during museum hours and caters only to museum patrons and employees; (2) accessible only through the main lobby and other ancillary entrances to the museum; and, (3) operated by a third party, BTP Partners pursuant to the terms a food service operating agreement between applicant and BTP. Applicant Motion Ex. No. 3. Applicant Motion Ex. Nos. 3, 3C.
14. The bookstore is located in the southwest quadrant of the first and second floors of the museum. It is open only during museum hours and accessible via one of three entrances. The first is a side entrance to the museum located on the first (or street level) floor at the intersection of Chicago Avenue and Miles Van Der Rohe Way, the second and third are interior entrances located within the museum improvement. *Id.*

15. The bookstore is stocked with inventory that relates to the permanent collection and current major exhibitions of the museum and caters to art students and contemporary art enthusiasts. *Id.*
16. The bookstore sells publications and other artistic materials that further the understanding of contemporary art and museum exhibitions. Its inventory consists mostly of: (1) catalogues, some of which are produced by applicant, that pertain to major museum exhibitions; and, (2) curriculum materials for classes, workshops and other programs that applicant offers at the museum. Applicant Motion Ex. Nos. 3, 3F.
17. The parking garage is not part of the museum improvement proper. It is, however, located directly beneath the museum's sculpture garden, which is situated immediately east of the museum improvement. Applicant Motion Ex. No. 3.
18. The City of Chicago (hereinafter the "City") required applicant to construct the parking garage as a condition of granting necessary zoning approval. The City codified this approval via an amendment to the Chicago Zoning Ordinance, dated October 14, 1992, that set forth the exact terms and conditions under which applicant was to use the parking garage. Applicant Motion Ex. No. 1.
19. Such terms and conditions included, *inter alia*, that applicant was to: (1) use the parking garage strictly for museum-related purposes; (2) require all automobiles using the parking garage to enter and exit onto Chicago Avenue, except in the event of an emergency; and, (3) designate at least two percent of all parking spaces in the parking garage for handicapped parking. *Id.*

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issues for decision herein necessarily becomes ones of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). Those issues are, precisely stated, whether and/or to what extent: (1) whether the subject property should be exempt from real estate taxes for any portion of the 1996 assessment year which occurred prior to September 30, 1996; (2) the café was “actually and exclusively used for charitable or beneficent purposes,” as required by Section 15-65 of the Property Tax Code, (hereinafter the “Code”), at any point during the 1996 assessment year; (3) the bookstore was “actually and exclusively used for charitable or beneficent purposes,” as required by Section 15-65 of the Property Tax Code, at any point during the 1996 assessment year; and, (4) the parking area was “used as part of a use for which an exemption is provided by [the] Code,” as required by Section 15-125 of the Code.”

A. Exemption Prior to September 30, 1996

With respect to the first inquiry, it is first noted that the statute governing alterations in exempt status due to changes in ownership is found in Section 9-185 of the Code. This provision, states, in pertinent part, that:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 ILCS 200/9-185.

One could plausibly conclude, as did the Department, that applicant obtained its “right of possession” when it obtained fee simple title to the subject property on September 30, 1996. However, the “owner” of real estate for property tax purposes is not necessarily synonymous with the person or entity that holds legal title to the subject property. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979). Rather, the “owner” is the person or entity that in practical terms: (1) exercises rights of control over the property; and, (2) derives benefits therefrom. People v. Chicago Title and Trust, *supra*; Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996).

Here, the state of legal title prior to September 30, 1996 was one wherein applicant leased the subject property pursuant to the terms of a long term ground lease with the fee owner. That fee owner, the Illinois Department Of Natural Resources, granted applicant several important rights of control over the subject property including, *inter alia*, the right to construct such improvements as applicant would use and enjoy for museum purposes thereon, under terms of that lease. Applicant actively and continuously exercised these rights, first by completing the final stages of the museum complex construction project, and then actually opening the museum for public use, throughout the entire 1996 assessment year.² Therefore, applicant, and not the Illinois Department Of Natural Resources, was the “owner” of the subject property during that tax year.

2. See, affidavit of it of applicant’s Chief Financial Officer, Janet Alberti, submitted as Applicant Motion Ex. No. 3.

This conclusion implies that any and all exemptions granted herein should be for 100% of the 1996 assessment year unless the subject property was not used for exempt purposes prior to September 30, 1996. The realities of modern construction practice dictate that construction of a museum complex as sophisticated as the one at issue herein is part and parcel of a process that ultimately leads to exempt use. Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). Hence, any and all steps that applicant took while concluding such construction process are, under the holding in Weslin Properties, exempt uses as a matter of law.

Such uses are nonetheless subject to the statutory caveat that the property cannot be “leased or otherwise used with a view to profit.” 35 ILCS 200/15-65. Applicant did pay rent in exchange for its rights of control and enjoyment prior to September 30, 1996. However, the \$1.00 in nominal rent it paid must be considered *de minimus*, and therefore, not indicative of a lease or other use for profit. Thus, for all the foregoing reasons, I conclude that any and all exemptions granted herein should be for 100% of the 1996 assessment year.

B. Exemption of the Museum Café and Bookstore

The first step in deciding whether the museum café and bookstore qualify for exemption under Section 15-65(a) is to set forth the pertinent Constitutional and statutory provisions as well as the applicable rules of statutory construction.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-1 *et seq.* The Code provision that governs exemption of the museum café and bookstore is found in Sections 15-65(a), which states, in pertinent part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity

35 **ILCS** 200/15-65(a).

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. Accordingly, statutes conferring such exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, the party seeking exemption bears the burden of proving by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemption pertains to "institutions of public charity." The statutory requirements for exemption under the provisions are: (1) exempt ownership; and, (2) exempt use. 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968). The exempt ownership requirement is not at issue in this case, except to the very limited extent resolved above. Furthermore, the Department's denials as to the café and bookstore were based solely on lack of exempt

use. Therefore, I shall forgo further discussion of the exempt ownership requirement and devote all remaining analysis to the issue of exempt use.

In Highland Park Women's Club v. Department of Revenue, 206 Ill. App.3d 447 (2nd Dist. 1990), the court held in favor of exempting certain auxiliary facilities that were located on an otherwise tax exempt performing arts complex. The auxiliary facilities consisted of food service concession stands that were operated by a third party commercial vendor and a small gift shop. Highland Park Women's Club, *supra* at 454, 464-65.

The court based its decision to exempt these facilities on four factors: first, that in general, it is the primary, rather than incidental, use of real estate that is controlling on the question of exempt use; second, that the facilities in dispute were but “a small portion” of the larger performing arts complex; third, that the facilities served the convenience of those patronizing the performing arts complex, and therefore, acted as a “mere adjunct” in fulfilling the overall charitable mission of same; and fourth, that any non-exempt uses of the facilities were incidental to those associated with serving the broader objectives of the complex. Highland Park Women's Club, *supra* at 464-65. *See also*, Decatur Sports Foundation v. Department of Revenue, 177 Ill. App.3d 696 (4th Dist. 1988) (concession stands that were part and parcel of a larger sports complex held exempt on similar grounds).

The same may be said of the bookstore and café. These facilities collectively occupy but 5.3% of the total building area within the otherwise exempt museum improvement, with the bookstore occupying only 2.7% of that total area and the café occupying but 2.6% of same. Furthermore, the facts that both of these facilities are: (1)

open only during museum hours; and, (2) center their operations around museum-related pursuits, prove that the café and the bookstore do in fact serve as “mere adjuncts” that serve the convenience of museum patrons. Hence, both the bookstore and café should be exempted pursuant to the reasoning set forth in Highland Park Women's Club, *supra*. Consequently, those portions of the Department’s determination that pertain to the café and the bookstore should be reversed. Therefore, for all the above-stated reasons, said determination should be modified to reflect that the entire museum improvement be exempt from real estate taxes for 100% 1996 assessment year.

C. Exemption of the Parking Garage

The statute governing exemption of parking areas is found in Section 15-125 of the Code, a provision which states as follows:

200/15-125. Parking areas

Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption, are exempt.

35 ILCS 200/15-125.

Here, applicant was legally required to construct the parking garage pursuant to the terms of a municipal ordinance that prohibited applicant from using the garage for other than museum purposes. I have previously concluded that the entire museum improvement was in exempt use throughout 100% of the 1996 assessment year. Therefore, pursuant to Streeterville Corporation v. Department of Revenue, 186 Ill. 2d 534 (1999), I conclude that the entire parking garage should likewise be exempt.

WHEREFORE, for all the above-stated reasons, it is hereby recommended that the entirety of real estate identified by Cook County Parcel Index Numbers be exempt from real estate taxes for 100% of the 1996 assessment year under Sections 15-65 and 125 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

January 19, 2001

Date

Alan I. Marcus
Administrative Law Judge